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#4

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23 SEP 1997

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In re Application of : DECISION ON
Fraunhofer-Gesellschaft et al. :
Application No.: 08/676,355 :
PCT No.: PCT/DE95/00055 : PETITION
International Filing Date: 16 January 1995 :
Priority Date: 19 January 1994 : UNDER 37 CFR 1.181
For: PROCESS FOR FINDING THE :
RECEIVABILITY OF RADIO SIGNALS IN A :
RADIO SYSTEM :

This application is before the Legal Staff of the PCT International Division for consideration of issues arising under 35 U.S.C. 371 and for decision on the "Petition Pursuant to 37 C.F.R. 1.181" filed by applicant on 05 May 1997.

BACKGROUND

On 19 July 1996, applicants filed international application PCT/DE95/00055, which claimed priority of an earlier German application filed 19 January 1994. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 27 July 1995. Accordingly, the thirty month period for paying the basic national fee for entering the national stage in the United States expired at midnight on 19 July 1996.

On 19 July 1996, applicants filed a "Request to Commence U.S. National Phase 35 U.S.C. 371", for entry into the national stage in the United States under 35 U.S.C. 371. Filed with the Request were, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of International application; an English translation of the international application as required by 35 U.S.C. 371(c)(2); an English translation of the Article 34 amendments; a Verified Statement Claiming Small Entity Status of Assignee Institute Fur Rundfuntechnik and a post card receipt.

On 04 September 1996, the United States Designated Office/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905), to inform applicants

that the oath or declaration of the inventor must be submitted within one month from the date of the notice in order to avoid abandonment of the application as to the United States.

On 05 May 1996, applicants filed the present petition requesting that the Form PCT/DO/EO/905 be withdrawn on the grounds that applicant filed a copy of the Inventor's Declaration and a copy of the Verified Statement Claiming Small Entity Status on 20 August 1996. The petition was accompanied by a copy of a post card receipt, a copy of the Inventor's Declaration, and a copy of the Verified Statement Claiming Small Entity Status.

DISCUSSION

The post card submitted by applicants is not sufficient to establish that the Inventor's Declaration and the Assignee's Verified Statement Claiming Small Entity Status were received in the Office on 20 August 1996. The criteria for a post card receipt to serve as *prima facie* evidence of receipt of a particular paper in the USPTO are spelled out in Section 503 of the Manual of Patent Examining Procedure (M.P.E.P.) which reads, in part, as follows:

".....The identifying data on the card should be so complete as to clearly identify the paper for which receipt is requested. For example, the card should identify the applicant's name(s), serial number, filing date, interference number, etc.....

.....A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Since the post card submitted by applicants does not identify the applicants names, serial number and filing date of the patent application, applicants have not complied with the criteria delineated in Section 503 of the M.P.E.P.. Therefore, the copies of the papers which applicants allege were filed 20 August 1996, cannot be accepted as having been filed in the present application.

The application is considered to be abandoned as of the expiration of the time period set in the Form PCT/DO/EO/905, i.e. 04 October 1996.

It should be noted that even if the copy of the declaration could be accepted as having been filed on 20 August 1996, the declaration itself could not be accepted as proper in that it does not properly identify the specification to which it is directed. Specifically, the declaration identifies the specification which "is attached hereto", but there apparently was no specification accompanying the 20 August 1996 papers. Additionally, the cover letter which is alleged to have accompanied the declaration was apparently unsigned.

Applicants should also note that the translation of the Article 34 amendments could not be entered because it is not an accurate translation of the Article 34 amendments. It is noted that claims 10 and 13 are not completely translated. Further, the German phrase "Listen (A)" in line 6 of claim 10 and the German phrase "Listen (B)" in line 5 of claim 13 have not been translated as required by PCT Rule 49.5(d).

RECOMMENDATION

Applicant(s) may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(a) or (b) requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting that the application be revived on the grounds of unavoidable delay must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied (1) by an adequate verified showing of the cause of unavoidable delay, (2) by a proper response, (3) by the petition fee required by law, and (4) by a terminal disclaimer and fee of \$110.00 if the petition is filed more than 6 months after the abandonment of the application. The petition fee required by law is \$55.00 for an applicant qualifying as a "small entity". Such a showing ((1) above) must be verified before a Notary Public or include the averments and warning required by 37 CFR 1.68 if made by a person not registered to practice before the Patent and Trademark Office.

Under 37 CFR 1.137(b), a petition requesting that the application be revived on the grounds of unintentional delay must be filed within 1 year of the date on which the application became abandoned or be filed within 3 months of the date of the first decision on a petition under 37 CFR 1.137(a) which was filed within 1 year of the date of abandonment of the application. Such a petition under 37 CFR 1.137(b) must be accompanied by (1) a proper response; (2) the petition fee required by law, and (3) a statement that the "delay was unintentional". The petition fee required by law is \$645.00 for an applicant qualifying as a "small entity".

This recommendation to file a petition under 37 CFR 1.137(a) or (b) should not be construed as an indication as to whether or not any such petition(s) will be favorably considered.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

The application is **ABANDONED**.

This application is being returned to the DO/EO/US for the mailing of a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909).



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